

Chesapeake Bay Local Assistance Board
Monday, December 8, 2003
James Monroe Building
101 N. 14th Street, Conference Room C
Richmond, Virginia

Members Present:

Mr. Colin D. Cowling
Mr. Donald W. Davis
Mr. William E. Duncanson
Ms. Mr. David C. Froggatt, Jr.
Mr. Daniel B. Nice
Mr. Walter J. Sheffield

Members Absent:

Mrs. Sue H. Fitz-Hugh
Mr. Stuart Mendelsohn
Michael V. Rodriguez

Staff Present:

Acting Executive Director, C. Scott Crafton
Administrative Assistant, Carolyn J. Elliott
Principal Environmental Planner, Shawn Smith
Principal Environmental Planner, Ryan Link
Senior Environmental Planner, Alex Adams
Senior Environmental Planner, Beth Baldwin
Senior Environmental Planner, Brad Belo
Agricultural Program Manager, Ron Wood

Mr. Davis called the meeting to order at 10:00 a.m., called the roll and noted that there was quorum.

Mr. Davis called for the Election of Officers and turned the meeting over to Mr. Crafton. Mr. Crafton explained that December is the month when the Board elects annual officers. He opened the process for nominations for the office of Chair. Mr. Cowling nominated Mr. Donald Davis. Mr. Crafton asked Mr. Davis if the nomination was acceptable to him, and called for a second. Mr. Duncanson seconded the motion. Mr. Nice motioned to close the nominations, Mr. Froggatt seconded. Mr. Crafton called for the vote to close the nominations. All members voted aye. Mr. Cowling motioned to elect Mr. Donald Davis Chair of the Chesapeake Bay Local Assistance Board. Mr. Duncanson seconded the motion. Mr. Crafton called for the vote. All members voted aye.

Mr. Crafton turned the meeting over to Mr. Davis who called for the nomination of Vice Chairman of the Chesapeake Bay Local Assistance Board. Mr. Daniel Nice nominated Mr. Colin Cowling. Mr. Davis asked Mr. Cowling if he would accept the nomination. Mr. Cowling accepted the nomination. Mr. Davis called for a motion to close the nominations for Vice Chairman. Mr. Nice motioned to close the nominations, and Mr. Sheffield seconded. Mr. Davis called for the vote to make Mr. Colin Cowling Vice Chairman of the Chesapeake Bay Local Assistance Board. All members voted aye.

Mr. Davis called for the approval of the September 15, 2003 Board meeting minutes. Mr. Nice moved approval and Mr. Cowling seconded. Mr. Davis called for comments. There were none. He called for the vote. All members voted aye.

Mr. Crafton next presented the Executive Director's report.

Mr. Crafton stated that the last couple of months have been quieter than the first part of the year. He said the efforts to support the Governor's Natural Resource Partnership Agenda have resulted in a final report to the Governor by the Natural Resource Funding Commission and proposed legislation from the Secretary and the Department of Conservation and Recreation (DCR) regarding streamlining the State Stormwater management programs under DCR administration. He said that in addition, he participated in a second meeting of the Governor's Natural Partnership Council a couple of weeks ago.

Mr. Crafton advised that staff participated in a series of Low Impact Development Workshops conducted jointly with the Army Corps of Engineers and DEQ, and staff participated as presenters at the State Coastal Conference in Williamsburg last week.

Mr. Crafton also advised that the first meeting of the new permanent Stakeholder Advisory Committee was held, where discussion began about the criteria in the regulations regarding designation of Intensely Developed Areas. He reminded everyone that the Hampton Roads localities requested an interpretation of the language "little of the natural environment remaining". He said the discussion at the first meeting was general, but a second meeting will be held on December 17, 2003. He said a draft of the Shorelands document was provided to the members for comment.

Mr. Crafton went on to discuss guidance development and staff agreeing to having a meeting, including field visits in the Hampton Roads area to look at ditches and discuss issues regarding ditches and their relationship to perennial stream protocol. He explained that staff had not had an opportunity to set up this meeting but would do so soon. He also noted that information gleaned from this meeting will provide information for staff to use when the regulations are reviewed under the APA requirements.

Mr. Crafton provided handouts to all members noting the status of all 84 localities regarding their local Bay Act ordinance amendments. He explained that 10 local ordinances have been revised and will have been reviewed by the Board by the end of the day's meeting. He noted that 32 localities have adopted revised Phase I programs and that this number includes the 10 that the Board had viewed. He said that according to local program contacts, a total of 54 localities will meet the December 31, 2003 deadline for adopting these revisions. He said another 15 localities are scheduled to adopt the revised Phase I programs in January 2004, six have indicated that they intend to adopt by March 2004, and noted that there are nine localities for which an adoption schedule have not been received. He noted that one locality has requested a deadline extension until June 2004.

Mr. Crafton advised that he had spoken to Mr. Davis about the nine localities, the lack of an adoption schedule, and the fact that over the past year, the agency had tried to proactively work with all 84 localities to develop adoption schedules. He said that a few localities had asked to slide into January 2004 for adopting their revised programs and noted that, as long as they are making progress, this would be acceptable. However, he stated that all 84 local governments have been made aware for

the past 2 years that these revisions were going to be necessary. He also said that staff recognized that some of these localities were small, like those on the Eastern Shore that have no local staff, and that there may be a need for the agency to provide specific assistance to them. He said it will be important for the Board to reconfirm the importance of the required revisions and the December 31, 2003 deadline to those localities who have not yet adopted their revised Bay Act ordinances.

Mr. Davis followed up, noting that one locality did call him about not being able to meet the schedule because of staffing problems and their public hearing process, and the Board of Supervisors wanted to have a work session to discuss and vote on the issue. He said that he had spoken with Mr. Crafton and the locality, noting that it may be okay to slip just past December 31, 2003, but the rule had been set by the Board that the December 31, 2003 is the deadline unless there are extenuating circumstances. He said there seemed to be some confusion between the locality and the liaison regarding whether the locality could put off adopting sometime in the future. Mr. Davis stated that it was his opinion that December 31, 2003 is a firm date.

Mr. Cowling commented that under Board procedures there would not be an occasion until March to take any action for non-compliance. He said that also under these procedures it would be necessary to give notice to the localities that action was being considered. He suggested that the localities be notified that the Board is proceeding under their normal procedures.

Mr. Crafton explained the process that is followed and Ms. Smith explained that at the Board's March 2004 meeting, those localities that have not yet adopted revised programs could be found inconsistent by the Board and the adopting resolution would then give the locality a final deadline which, in this case, could be June 2004 as Mr. Cowling indicated. She also said that if they did not adopt a revised Bay Act program by June 2004, then the Board could turn the matter over to the Attorney General's Office for appropriate legal action.

Mr. Crafton stated that it was important to use the procedures to affect compliance.

Mr. Chaffe commented that if the Board is considering taking this action at the March meeting, adequate notice must be given to the localities before the March meeting so they have an opportunity to appear.

Mr. Davis commented that giving notice was one of the reasons that he sent a letter to localities on November 26, 2003 advising them of the need to provide an adoption schedule. He said that he had not heard from all of the localities that had received his letter.

Mr. Chaffe responded that adequate notice must be given to the localities notifying them that their locality will be on the agenda.

Mr. Crafton asked that if it was acceptable, he would send a letter out advising that the deadline was serious and that those localities that have not yet adopted revised Bay Act programs by December 31, 2003 can expect to come before the Board at the March 2004 meeting.

Mr. Davis asked if the Board needed to select a date by which this letter would go out as well as a required response date from the localities. Mr. Davis stated that he believed it appropriate to wait

until mid-January 2004 to send the letter, in order to provide an opportunity for those localities who have neither adopted nor sent in an adoption schedule to do so. Mr. Crafton agreed.

Mr. Cowling commented that there would probably be those who will wait until the eleventh hour to submit their paperwork and that he was willing to accept that.

Mr. Crafton noted that there were local program reviews on the agenda including recommendations from two compliance evaluations. He noted that the staff workloads will pick up considerably over the next several Board meetings as revised Bay Act programs are reviewed.

Mr. Crafton advised that he had asked Mr. Roger Chaffe to provide training to the Board members regarding the Freedom of Information Act. However, it was agreed to delay this training until the March 2004, meeting because several new Board members were not in attendance at today's meeting. He went on to say that York County had produced a Buffer Video that would be shown later in the meeting. He explained that several years ago, CBLAD had provided funds to produce another training video, and it was done so well that the Department agreed to help with the cost of this one too.

Mr. Davis asked if there were any questions for Mr. Crafton.

Mr. Cowling commented that what has been missing this year was a grants committee and the voting on grants. He asked what the monetary situation is regarding grants. Mr. Crafton responded that he had submitted a budget decision package to ask for new funding for the grants program. A second package requested full funding for the Polecat Creek Water Monitoring Project. He said that he had heard unofficially that it is unlikely that either of these packages will be in the Governor's budget. He said he would know more on December 17th when the Governor reveals his budget. He said given the fiscal climate that Virginia is in right now, it certainly appears that there will be additional cuts in the budget, even with revenue growth. He explained that this year there was some federal money that the agency had been able to pass along to a couple of localities for Chesapeake Bay Act implementation. He said that many local officials have told him they need CBLAD grants to adequately implement their Bay Act programs, but that many other local issues such as transportation, education, and social services are more pressing local priorities.

Mr. Duncanson asked what the local government response has been to the cutting of the Department's grant funding. Mr. Crafton commented that it was interesting in that more developed, metropolitan localities seem to be able to fund their local programs internally and tend to not be very concerned about the absence of grand funding. In truth, the more prosperous localities tend to not score well in CBLAD's grant process. He explained that this may be due to the fact that one of the criteria for evaluating the grant proposals is fiscal stress, and the more developed localities generally are less fiscally stressed than some of the more rural localities. He continued by noting that the more rural localities seem to find the environmental issues important, but that they too have many higher priorities such as education. He said that last year funding Bay Act grants was on VACO's legislative agenda; however, it was much farther down the list of important programs to fund.

Mr. Crafton advised that he had heard from his informal discussions with localities that if no funding is provided for grants, then some have indicated they might not be able to implement the program adequately. He said that some localities were trying to prepare the agency for the argument

that there might not be much they can do without funding. He commented that he believed they should let their legislators know.

Mr. Duncanson commented that he had heard that without the funding to continue the regional inspector positions in his area that some local Boards would actually put in a motion to repeal the Bay Act. Mr. Crafton commented that the Northern Neck and the Eastern Shore are the two that are going to be funded out of the Bay Act. Ms. Smith agreed.

Mr. Davis thanked Mr. Crafton for his report and called for the presentation of Consent Items. Mr. Davis explained that only a vote was required and no staff presentations would be made for the Town of Windsor or the City of Suffolk.

Mr. Davis called for a motion to approve the Town of Windsor and the City of Suffolk. Mr. Nice motioned to approve both localities as requested in the staff report. Mr. Duncanson seconded the motion. Mr. Davis called for further comments. There were none. He called for the vote. All members voted aye.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 8, 2003

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF WINDSOR - #67

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Windsor adopted a local Phase I program on October 13, 1992, and

WHEREAS on February 25, 1993, the Town's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the Town of Windsor adopted a revised local program to comply with §§ 9VAC10-20-60 1 and 2 of the Regulations on August 12, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to the Town of Windsor's revised program for consistency with the Act and Regulations; and

WHEREAS on October 28, 2003 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Windsor's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on December 8, 2003 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 8, 2003

RESOLUTION

LOCAL PROGRAM, PHASE II

CITY OF SUFFOLK #51

Extension of Compliance Deadline – To June 30, 2005

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103.10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS the City of Suffolk City Council adopted a comprehensive plan on March 25, 1998; and

WHEREAS, on October 30, 2000 the Local Program Review Committee for the Southern Area reviewed the staff report regarding the response report and considered testimony and recommended to the Board that the City's Phase II program be found consistent with conditions and with a compliance date of December 31, 2003; and,

WHEREAS, the City of Suffolk has begun the 18 month process of updating the City's entire comprehensive plan; and

WHEREAS on October 28, 2003 the Local Program Review Committee for the Southern Area reviewed the circumstances of the City, the comments of the staff, and recommended that the deadline be extended to June 30, 2005; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board extends the date for City of Suffolk to come into compliance with § 10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations from December 31, 2003 to June 30, 2005.

BE IT FURTHER RESOLVED that the conditions previously imposed and still applicable for a finding of consistency are as follows:

1. The City shall strengthen the 2018 Plan in regards to physical constraints, to development, environmental and natural resource protection, suitability for development, and the protection of agricultural lands within the CBPA. Maps that provide greater detail in regard to CBPA features would also be developed and included in the plan update or amendment. In particular, two areas where consideration should be given to providing a more thorough discussion and presentation of information are: 1) development and addition to the plan document of a more "traditional" Environmental Overlay component; and 2) the development of policy and action statements pertaining to improving the preparation, implementation and monitoring of Bay Plans.
2. The City shall strengthen the 2018 Plan pertaining to the protection of potable water supply; particularly in regards to the protection and management of local and regional water supply watersheds. Also, consideration should be given to formally adopting the guiding principles, and policy and action statements therein as a component to the 2018 Plan update; and as needed, additional implementation strategies be proposed therein.
3. The City shall strengthen the Plan as it pertains to the shoreline features and characteristics, and their significant relationship to water quality. In particular, consideration should be given to formally adopting the guidance, policies and action statements and implementation strategies contained in the HRPDC, Data Package as components of the 2018 Plan. Specific topics for consideration include thorough discussion and mapping of 1) Physical oceanographic shoreline conditions; 2) inventory of natural wetlands, and natural and manmade shoreline features; and policy and guidance statements specifying when and where particular shoreline erosion controls are appropriate.
4. The City shall strengthen the Plan in regards to improving public, private and commercial access to the City's waterways, and shoreline development within the CBPA and its potential impact on water quality. Specifically, consideration should be given to including a more in

depth and thorough discussion pertaining to: 1) the prevention of conflicting development patterns and uses with fishing operations; 2) the prevention of conflicting development patterns, uses and activities pertaining to the protection and preservation of important wetlands, spawning and nursery grounds; 3) the development of existing and future points of access; and 4) the development of marinas and boating facilities

5. The City shall strengthen the Plan pertaining to redevelopment in general; and in particular, the redevelopment of the downtown core area. Furthermore, consideration should be given to formally adopting an Environmental Redevelopment Plan. This plan would include an inventory and mapping of RPA features and buffer strip within downtown Suffolk. This Environmental Redevelopment Plan would also include a Buffer Reestablishment Plan and Storm water BMP Plan.

BE IT FINALLY RESOLVED that failure by the City of Suffolk to meet the above established compliance date of June 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations and subject the City of Suffolk to the compliance provisions as set forth in §10.1-2103.10 of the Act and §9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on December 8, 2003 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Acting Executive Director
Chesapeake Bay Local Assistance Department

Mr. Davis called for the presentation of Phase II programs and recognized Mr. Brad Belo for staff's presentation for James City County.

Mr. Belo provided a review of James City County's comprehensive plan noting that it had been revised and amended in 1997 and reviewed by the Board in 1998. He explained it was found consistent with five conditions with a deadline set in 2000 and then extended to 2001.

He said in 2001, the County failed to meet the consistency requirements and the Board found their Phase II program inconsistent and set a new deadline for consistency for September 2002. He said that although the County was unable to meet the September 2002 deadline, the Board deferred taking action until September 2003. He said that on August 12, 2003, the County had completed their amendments and revisions to their comprehensive plan and had adopted, well before the September 15th deadline that was set. He explained that the Board's five consistency requirements addressed physical constraints to development, protection of potable water supply, shoreline and streambank erosion control and public and private access to waterfront areas.

He said that in staff's opinion and in the Southern Area Review Committee's opinion those requirements have all been met by the newest comprehensive plan adopted on August 12, 2003. Mr. Belo closed his comments by expressing apologies from County's staff that they were unable to attend the day's meeting.

Mr. Davis called for a motion. Mr. Nice motioned that the comprehensive plan amended and adopted by James City County on August 12, 2003 be found consistent with § 10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

DECEMBER 8, 2003

RESOLUTION

LOCAL PROGRAM - PHASE II

JAMES CITY COUNTY - #03

Determination of Consistency - Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103.10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS James City County adopted a Comprehensive Plan in 1993; and

WHEREAS on September 21, 1998 the Chesapeake Bay Local Assistance Board found James City County's plan consistent with five (5) recommendations for consistency that were to be addressed by the County and set a compliance date of December 31, 2000; and

WHEREAS on September 18, 2000, the Chesapeake Bay Local Assistance Board extended the County's compliance deadline from December 31, 2000 to December 31, 2001; and

WHEREAS on March 18, 2002, the Chesapeake Bay Local Assistance Board found the County's Phase II program inconsistent with the Bay Act and Regulations and set a compliance deadline of September 20, 2002; and

WHEREAS on December 9, 2002, the Chesapeake Bay Local Assistance Board, in light of the significant progress made by the County in its comprehensive planning process, deferred taking legal action until September 15, 2003; and

WHEREAS the Board of Supervisors for James City County adopted an amended comprehensive plan on August 12, 2003; and

WHEREAS staff has reviewed James City County's comprehensive plan for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on October 28, 2003 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds James City County's comprehensive plan consistent with § 10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on December 8, 2003.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Froggatt seconded the motion.

Mr. Davis called for the vote. All members voted aye.

Mr. Cowling commented that for the benefit of the new members, the issue with James City County centered around the requirement of revisiting the comprehensive plan every five years. He said the state's requirement and the Board's requirement had gotten out of sync and it was James City County's wish to coincide the update of their comprehensive plan with the five year revisit requirement of the law and did not wish to do the work twice.

Mr. Crafton commented that all local governments are not on exactly the same schedule in terms of the five year cycles. He explained that whenever they did one initially, staff is to review it every five years. He said they are coming in at different times. Mr. Davis commented that he believed the Board had been very accommodating with James City County. Mr. Cowling noted there was another locality that was having the same difficulty and in James City County's case he was very willing to cooperate with them because on the ground they were doing the job. It was just a matter of getting the paper work done.

Mr. Davis called for Local Program Reviews – Compliance Evaluation and recognized Mr. Alex Adams to provide staff's report for Stafford County.

Mr. Adams provided two copies of the site evaluation sites. He explained that Stafford County's Phase I program was reviewed and found consistent with two conditions on June 21, 1994, subsequently the program was found fully consistent on March 18, 2002. He advised that the current staff in Stafford consisted of one part-time planner, one part-time planning technician, and other staff as needed to help with Chesapeake Bay issues.

Mr. Adams said that the County is currently in the process of revising their bay preservation ordinance and adopted it on December 2, 2003. He said the septic pump-out program is very successful and CBLAD had been able to help them fund the program over the last four years. He said the response rate was greater than 85%. He introduced Mr. Steve Hubble, County Planner, and Mr. Jeff Harvey, Planning Director, who would be available to answer questions.

Mr. Adams said that overall the County had been very responsive to the Bay Act program and committed to the enforcement of the Regulations. He said there could be better communication between departments in education which is a typical issue, and staff has recommended that the County's Phase I implementation process does not fully comply with the Regulations and recommends a date of December 31, 2004 for the three consistency items.

He said the three consistency items are: Number 1. Construction plan approval must be withheld until all required county staff receives environmental delineations and permits if required by federal, state and/or local laws. The County may elect to grant conditional approval of preliminary plans. In no case shall any clearing or grading permits be issued prior to final plan approval with evidence of all necessary environmental permits.

Mr. Davis asked if the entire County was subject to the Bay Regulations.

Mr. Adams responded they were. Mr. Davis stated then this would be a standard for the entire County, and it is not a County that has an RMA and an RPA.

Mr. Adams responded that was correct. He said that Stafford County revised their ordinance in December to include the entire county as RMA.

Mr. Adams went on to explain the second comment was to develop a tracking mechanism for BMP locations, easements, maintenance agreements and repair schedules. This will ensure BMPs are inspected periodically to ensure compliance, and the third comment that was changed in the Northern Area Review Committee meeting states: the County should keep records of any roads/driveway and stormwater management facilities meeting the Regulation requirements outlined in section 9VAC 10-20-130.1.d and e. These facility's cumulative impacts should be tracked to evaluate whether potential projects meet the criteria required.

Mr. Adams asked if there were any comments. Mr. Sheffield asked Mr. Adams if he had received the letter from Stafford County as requested in the Northern Area Review Committee Meeting. Mr. Adams asked Mr. Sheffield to elaborate on his question and the letter requested. Mr. Sheffield explained that during the Northern Area Review Committee meeting he requested that a letter be provided before the December 8, 2003 meeting dealing with Recommendation #1. He stated that he had not received a copy.

Mr. Adams asked if that was in regard to the erosion control. Mr. Sheffield said it was dealing with the additional approval. Mr. Adams commented that erosion control issues had been addressed at the Northern Area Review Committee meeting in the third photograph. He said that staff had received a full set of plans for the site and Catherine Harold, the Department's Stormwater Engineer, had reviewed them and he was drafting a letter to the County regarding the plans outlining what they had found and asking that they respond regarding their E&S policies. He said that with regard to the compliance evaluation staff believed the site in question was abnormal within the County, however, it was important to follow up and get a full set of site plans.

Mr. Sheffield asked Mr. Adams to reread Recommendation #1. Mr. Adams did so. Mr. Sheffield commented that to his recollection at the Northern Area Review Committee meeting was Stafford was going to address this point in writing so that there could be some assurance. Mr. Sheffield asked if he misunderstood. Mr. Davis commented that he remembered the same thing, and asked Mr. Hubble to address Mr. Sheffield's question.

Mr. Hubble commented that he did not recall that the County actually had to bring a letter to the Board and rather they were going to work with staff. However, he said that if the Board wants this in writing, he will provide this for their assurance. He said steps had already been taken to assure that this process is occurring and offered to go through it verbally, or he would get a letter to the Board when they get back to the office detailing the information, whichever was the pleasure of the Board. He went on to say that they would write the letter to staff as soon as they go back.

Mr. Davis stated the issue is to make sure that permits are not issued and that erosion and sediment control measures are in place prior to the actual land disturbance taking place. Mr. Hubble stated that was not his understanding. Mr. Davis asked what his understanding was. Mr. Hubble responded that his understanding of the recommendation was that they were to hold all construction and any plan approval that would initiate a land disturbing activity until all federal and state wetlands permits were obtained. Mr. Davis stated to back up a little bit, and asked did they issue land disturbing permits before you have plan approval. Mr. Hubble responded no. Mr. Davis asked if permits are required at a preliminary stage or a final stage for plan approval. Mr. Hubble responded that you could not get a land disturbing or what they call a grading permit until all the appropriate plans are approved. Mr. Davis said, when you have all local state and federal permits either in place or evidence of them being required prior to that time. Mr. Hubble responded that was the goal of the recommendation from his understanding. Mr. Davis asked, is that taking place now? Mr. Hubble responded yes, currently it is. Mr. Davis asked Mr. Hubble to put that in writing to the Board. Mr. Hubble agreed and Mr. Davis thanked him.

Mr. Hubble thanked staff for their assistance.

Mr. Davis called for further comments. There were none.

Mr. Crafton pointed out a typo in the Resolution where it referred to the Town of Cape Charles. Mr. Davis noted that the typo had been pointed out in the Northern Area Review Committee meeting.

Mr. Davis called for a motion. Mr. Sheffield motioned, subject to the Board's receipt of a letter be written to members of the Board regarding Recommendation #1 and it being incorporated as part of the motion, to find that certain aspects of Stafford County's implementation of its Phase I program do not fully comply with §§9 VAC 10-20-231 and 250 of the Regulations and further that Stafford County undertake and complete the three recommendations contained in the staff report no later than December 31, 2004.

STAFFORD COUNTY'S RESOLUTION WHEN RECEIVED IS TO BE PUT IN HERE.

Mr. Cowling seconded the motion.

Mr. Davis called for the vote. All members voted aye. Mr. Davis noted that the motion carried.

Mr. Davis recognized Ms. Beth Baldwin for staff's report on Richmond County's compliance evaluation report.

Ms. Baldwin introduced Mr. Chris Jett, Director of Planning, noting that Mr. Jett provided valuable assistance in the completion of the evaluation and spent a considerable amount of time pulling site plans, arranging for and accompanying staff on site visits, and reviewing the final report. She said the Department initiated the compliance evaluation on April 28, 2003. Department staff met with Mr. Jett and Mr. Barry Sanders, the County's Code Administrator, Ms. Micqui Whiddon, their Environmental Inspector, and Mr. William Duncanson, the County Administrator on June 10th. She said a second meeting was held on August 21, 2003 to review site plans and discuss the County's site plan review process. She said that staff reviewed a total of 11 site plans with the County, and five of the site plans reviewed were selected for site visits that were conducted on September 9, 2003.

Ms. Baldwin went on to say that Richmond County did an outstanding job with implementation of their local program and there were several unique aspects of their program. She noted that when the County created their map of Resource Protection Areas (RPA), they took a conservative approach and included "intermittent streams" which meant that most potential sites for RPAs would have already been identified. She said the map is used only as a general guide, and a site-specific determination is always performed, and that in the past five years, there had not been any requests for exceptions. She indicated that the lack of petitions for exceptions might be attributed to the extensive amount of time that County staff invests with applicants during the pre-application conferences and site visits. She went on to say the third aspect was the County has begun to require recording of BMPs for all development activities in Richmond, including the most predominant type of development, single-family homes. Finally, she said that the County strictly and fairly implements its ordinance with respect to buffer encroachments. She stated that encroachments are only permitted for necessary expansions of nonconforming principal structures and for lots recorded prior to the Bay Act and then at the minimum necessary.

Ms. Baldwin went on to explain that during the evaluation, staff identified four areas where Richmond County's implementation of their program did not appear to fully comply with the Act and Regulations. She said that these four recommendations primarily focused on recording keeping and other administrative procedures.

She said the Department recommended that Richmond County begin to require Water Quality Impact Assessments (WQIA) for any land disturbance, development, or redevelopment in a Resource Protection Area. She said that a WQIA is required by the County's ordinance and by the Regulations, and staff agreed to work with the County in developing appropriate WQIAs for different types of development.

She said the second area noted is that paperwork such as field notes, inspections, and documents pertaining to administrative waivers were not always included in the files. She said complete files are an important aspect of the implementation of the program since it is through the files that a local government can clearly document its decision process and adherence to its local ordinance requirements.

She said third, Richmond County has not established its septic tank pump-out notification and enforcement program. She said that this program is required by the County's ordinance and by the Regulations. She said given the County's reliance on septic systems, implementation of this program is highly important. She also explained that the County did have access to a septic tank inventory through a database developed by the Northern Neck Planning District Commission and funded in part by CBLAD. She said that although the database continues to be refined and added to, Richmond County should begin its notification process.

Ms. Baldwin explained that Richmond County has not established a formal procedure for tracking and inspecting BMPs. She said that while BMPs are recorded, there is no system in place for ensuring regular and timely inspections of them and currently, the County performs visual inspections of BMPs at irregular intervals.

Ms. Baldwin noted that the staff report included some suggestions that might assist the County with improving certain aspects of implementation of their program. She said the suggestions were bulleted in the report and are not required for compliance.

Ms. Baldwin closed her comments advising that staff would be working closely with the County to address the four compliance items. She asked the Board to find that certain aspects of the County's implementation of its Phase I program do not fully comply with the Act and Regulations and that the County undertake and complete the four recommendations contained in the staff report no later than December 31, 2004.

Mr. Davis called for questions.

Mr. Cowling asked who picked the sites that were investigated by staff. Ms. Baldwin responded that she and Shawn Smith had selected the sites based on the site plans they reviewed.

Mr. Davis asked Mr. Jett how the County had managed to go for five years without an exception request.

Mr. Jett responded that he believed that they were able to do that in large measure because of the size of the lots and an adequate building site can be located. He stated that individuals are informed that if they decide to ask for an exception that staff would recommend against the request in most cases and subsequently, few individuals try to push the issue. He said that if there were smaller lots and more development pressure then most likely they would see more exception requests. Mr. Jett went on to thank staff for assisting them through the process and he believed the process was fair and reasonable.

He said that he wanted to make a couple of comments. First, he stated that the County adopted their revised ordinance on November 13th. He said that added the option of allowing installation of filters and/or inspection of septic systems. He believes that this would help with meeting the septic tank pump out requirement. He also said that a sample notification letter has been developed to go out to landowners. He said the only other issue was the comment made with regard to Water Quality Impact Assessments. He stated that he believes the elements of the WQIA are addressed through the

site plan review but recognizes the need for documentation. He said that Department staff had already sent WQIA templates and that the County is in the process of tailoring them to meet their needs.

Mr. Davis called for a motion. Mr. Sheffield complimented Mr. Jett for the County's proactive Bay Act program and asked if he would have any trouble meeting the deadline in December 2004. Mr. Jett responded that he did not.

Mr. Davis asked if the County had, in the past, ever proactively implemented a septic tank pump-out program but which now was not proactively enforced.

Mr. Jett responded that the County had not done what should have been done for implementation of the pump out. He explained that one of the difficulties in the past with this requirement was the lack of good information identifying which properties had septic systems. He said that they have taken steps through the grant that Ms. Baldwin referred to and that in addition, the County had provided some funds to the local Health Department to continue to update the database.

Mr. Davis asked if the database is helpful. Mr. Jett commented that the Health Department had until recently kept records by name rather than parcel number. They have updated their record keeping system. Mr. Davis thanked Mr. Jett for his comments.

Mr. Sheffield motioned to find that certain aspects of the County's implementation of its Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§ 9VAC 10-20-231 and 250 of the Regulations, and that Richmond County undertake and complete the four recommendations contained in the staff report no later than December 31, 2004.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 8, 2003

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

RICHMOND COUNTY - #30

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9VAC 10-20-250.1.b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in Summer of 2003, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of Richmond County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on October 28, 2003 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of the Richmond County's Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§ 9VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs Richmond County to undertake and complete the four recommendations contained in this staff report no later than December 31, 2004.

1. As required by Article 8 of the County's CBPA Ordinance, the County must document submission of a WQIA for any proposed land disturbance, development or redevelopment within RPAs, and for development in RMAs when required by the Director of Planning.
2. The County should begin to keep more complete files on all RPA administrative waiver requests to include all site visit notes, staff recommendations, Board actions/minutes, WQIA related materials when required, and other related materials to ensure that a complete record of all requests are available for review and to ensure that all required conditions have been met.
3. The County must develop and implement a 5-year pump-out notification and enforcement program, and, if desired, revise the CBPA Ordinance to allow for the installation of the filter and/or inspections, including any necessary tracking information, for compliance with § 9VAC 10-20-120.7 of the Regulations.
4. The County must complete the development of a BMP database to track type, installation date, location, inspections and maintenance to satisfy § 9VAC 10-20-120.3 of the Regulations.

BE IT FINALLY RESOLVED that failure by Richmond County to meet the above established compliance date of December 31, 2004 will result in the local program becoming noncompliant with §§10.1-2109 and 2111 of the Act and §§ 9VAC 10-20-231 and 250 of the Regulations and subject the Richmond County to the compliance provisions as set forth in §10.1-2103.10 of the Act and § 9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on December 8, 2003 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Executive Director
Chesapeake Bay Local Assistance Department

Mr. Cowling seconded the motion.

Mr. Davis called for further comments. There were none.

Mr. Davis called for the vote. All members voted aye except for Mr. Duncanson who abstained. Mr. Davis noted that the motion carried.

Mr. Davis called for Training and called for the presentation of the Buffer Video.

Ms. Smith provided the background of the buffer video project, explaining that the York County Wetlands Board had received about a \$5,000 grant from the agency to produce a video about riparian buffers. She noted that the County had also received money, a couple of years ago, to produce a successful video about their wetlands programs and that this video would build on that project.

After the video was shown Mr. Cowling inquired whether copies would be made available. Mr. Crafton responded that providing the video in DVD form is being discussed, and some video tape copies had already been received. He said that there would be loaner copies available. Ms. Smith responded that staff is investigating making DVD copies and that it would be great to use the video as a part of training for the Buffer Manual grant.

Mr. Davis asked when the video had been completed. Mr. Crafton replied that it was very recent, within the last month. Mr. Davis asked if, besides providing it to the localities, whether plans would be made to have it shown to the general public. Ms. Smith commented that Ms. Little was in charge of the grant and that she did not know the specifics but would ask Ms. Little to provide the Board with details on the distribution and use of the video. Mr. Crafton commented that the cost to duplicate the video would have an impact on the distribution and use of the video.

Mr. Davis commented that he would like to encourage the Department to distribute the video to and use it for more than just the localities.

Mr. Cowling suggested that it would be a good idea to provide schools with a copy. Mr. Duncanson agreed. Mr. Crafton noted that an environmental education group was located in the building and would call to find out how they could get this information into the schools.

Mr. Davis complemented staff and York County and suggested that a letter be written to York County from the Board with their compliments on the completed video.

Mr. Sheffield suggested that staff provide a report about the copying and budget information regarding the distribution of the video by their next meeting.

Mr. Davis called for any other Board sponsored activities. Mr. Crafton advised that Mr. Roger Chaffe would provide Conflict of Interest and FOIA training at the March 2004 meeting. He went on to invite members to attend the agency Christmas party that is taking place on Tuesday, December 16th at 11:30 a.m.

Mr. Davis called for any new business. Ms. Smith asked if the Board members wanted to approve the 2004 calendar of meeting dates for Board and Northern and Southern Area Review Committee meetings. Mr. Davis noted that a motion was not necessary and asked the members for an informal approval. All members agreed.

Mr. Davis called for Public Comment. There was none.

Mr. Davis stated there being no further business, called for a motion to adjourn the meeting. Mr. Nice motioned and Mr. Duncanson seconded to adjourn the meeting. The meeting was adjourned at 11:25 a.m.

Donald W. Davis
Chairman

C. Scott Crafton
Executive Director